

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

The challenge of pro bono legal service

BY DEANE B. BROWN

It is an honor and a privilege to serve as **Chair of the Bench and Bar Section Council** of the Illinois State Bar Association for the 2017-2018 bar year. The mission of our Council is to forge

a spirit of cooperation, collegiality and exchange among state and federal judges and the practicing bar, and to enhance the court system, the administration of justice

Continued on next page

Editor's column

BY HON. EDWARD SCHOENBAUM (RET.)

Dear Readers of the Bench & Bar Newsletter,

The Bench & Bar Section has a diverse membership, and our Newsletter an impressive circulation. Our readers are Judges and Attorneys (some of each are retired) throughout Illinois (and beyond). In a time when we all have numerous publications competing for our time and attention, we strive to put timely, relevant, and interesting content in your hands (or on your screen) with every issue. Our August issue is no exception. You will note, however, that in this issue, except for Deane Brown, our new Chair doing her first Chair's Column, all of the authors are judges, justice, ALJ, but no attorneys. September's issue, we hope, will have a more assorted authorship. Edward Casmere and Evan Bruno, our new Associate Editors, will take the lead on getting our attorneys to get their articles

in for all of the remaining issues. If you are interested in publishing an article in the Bench & Bar Newsletter please email us at JudgeEdS@gmail.com, evan.bruno@gmail.com, ecasmere@rshc-Law.com so we can follow up with you.

We like to have four to six articles in every monthly issue. Each author decides their own topic, whether it is about practice, an analysis of a recent decision or legislation, a proposal the Section Council should consider, or something we can learn from another state, or anything at all lawyers and judges should think or write about. If you have questions, call one of us or send them to one or all of us. We encourage any of our readers to recruit family members, summer interns, associates, law school students, etc. to contribute articles.

This Newsletter goes to all members of the Bench & Bar Section, all Federal and State Judges and is seen by others. ■

The challenge of pro bono legal service
1

Editor's column
1

A commitment to truth
3

Michael Tardy retires as Director of the Administrative Office of the Illinois Courts
5

People v. Way: A defendant charged with aggravated DUI may raise the affirmative defense of sole proximate cause
6

Summer externs = HUGE Help
7

Looking ahead: A reflection on the emerging diversity in the law profession
8

Busted: The myth of the digital native
9

Recent appointments and retirements
9

The challenge of pro bono legal service

CONTINUED FROM PAGE 1

for the public, and the relationship between judges and lawyers. My predecessor, Illinois Appellate Justice Michael Hyman, included a discussion topic pertinent to judges and lawyers at every meeting, which Council members found refreshing and informative. As the current Chair, I will continue to include similar discussions in the Council's Agenda, as our meetings present a unique opportunity to hear the perspectives of both judges and lawyers on relevant topics to the legal profession and the judiciary. I plan to report on these discussions in this Chair's Column.

During the Council's first meeting in June 2017, we discussed the many challenges of pro bono service. Illinois Supreme Court Rule 756(f)(1), which became effective in June 2006, requires lawyers to report the approximate amount of his or her pro bono legal service annually, which it defines as:

- (1) *Pro bono* legal service includes the delivery of legal services or the provision of training without charge or expectation of a fee, as defined in the following subparagraphs:
 - (a) legal services rendered to a person of limited means;
 - (b) legal services to charitable, religious, civic, community, governmental or educational organizations in matters designed to address the needs of persons of limited means;
 - (c) legal services to charitable, religious, civil or community organizations in matters in furtherance of their organizational purposes; and
 - (d) training intended to benefit legal service

organizations or lawyers who provide *pro bono* services.

The Supreme Court specifically states in Rule 756(f)(1) that "[l]egal services for which payment was expected, but is uncollectible, do not qualify as *pro bono* legal service." According to the Committee Comment to Rule 756(f), the Special Supreme Court Committee on Pro Bono Publico Legal Service "recognized the vast unmet and burgeoning legal needs of persons of limited means in Illinois, and the unique role that lawyers play in providing greater access to these critical legal services." Thus, Rule 756(f) was "established to serve as an annual reminder to the lawyers of Illinois that *pro bono* legal service is an integral part of a lawyer's professionalism." According to the Special Committee, the primary goal of Rule 756(f) is to increase the delivery of legal services directly to persons of limited means, as defined in Rule 756(f)(1)(a).

Despite the laudable goal of Rule 756(f), the Attorney Registration and Discipline Commission reports that only approximately one-third of Illinois lawyers actually perform pro bono legal service. While our Council members recognized that performing pro bono service is a responsibility of the legal profession to the public, they discussed a number of possible reasons for this disappointingly low number. Many Council members agreed that one of the biggest obstacles to performing pro bono work is the expense of doing so, at the cost of billable work. Many bottom-line driven law firms have minimum billable hour requirements which make doing non-billable, pro bono work a challenge. And many solo practitioners, whose income has decreased approximately 30% over the last 20 years, simply cannot afford to do pro bono work. This is especially a problem in rural Illinois, where there are very few legal aid clinics.

In addition, some Council members observed that an impediment to doing pro

Bench & Bar

Published at least four times per year. Annual subscription rates for ISBA members: \$25.

To subscribe, visit www.isba.org or call 217-525-1760.

OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

Hon. Edward J. Schoenbaum (ret).
Evan Bruno
Edward M. Casmere

MANAGING EDITOR / PRODUCTION

Katie Underwood
✉ kunderwood@isba.org

BENCH & BAR SECTION COUNCIL

Deane B. Brown, Chair
David W. Inlander, Vice Chair
Hon. Stephen R. Pacey, Secretary
Hon. Michael B. Hyman, Ex-Officio
William A. Allison
James J. Ayres
Brad L. Badgley
Hon. Patrice Ball-Reed
Michael G. Bergmann
Sandra M. Blake
Chris Bonjean
Evan Bruno
Edward M. Casmere
Michael J. Dickman
Robert W. Fioretti
Hon. Fred L. Foreman
Ava M. George Stewart
Hon. Richard P. Goldenhersh
Barry H. Greenburg
Emily Ann Hansen
Kenya A. Jenkins-Wright
Hon. Michael S. Jordan
Hon. Ann B. Jorgensen
Hon. Lloyd A. Karneier
Hon. Michael P. Kiley
Dion U. Malik-Davi
Hon. Brian R. McKillip
Daniel E. O'Brien
Hon. John J. O'Gara, Jr.
Melissa M. Olivero
Jayne R. Reardon
Hon. Jesse G. Reyes
Juanita B. Rodriguez
Hon. Edward J. Schoenbaum
Hon. Alfred M. Swanson, Jr. (ret).
Hon. Richard L. Tognarelli
Hon. April G. Troemper
Hon. Debra B. Walker
Marc D. Wolfe
Hon. E. Kenneth Wright, Jr., Board Co-Liaison
Albert E. Durkin, Board Co-Liaison
Melissa Burkholder, Staff Liaison
Eric P. Hanson, CLE Committee Liaison

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

bono work is that many lawyers feel they do not have the expertise in the subject areas in which pro bono work is often needed, such as immigration and domestic relations. Cognizant that Rule 1.1 of the Illinois Rules of Professional Conduct requires lawyers to “provide competent representation to a client,” which “requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation,” many lawyers are concerned about violating this Rule by rendering pro bono legal services outside of their practice areas. While training in

specific practice areas may be offered by bar associations or legal aid organizations, many lawyers cannot spare the time to adequately learn new subject areas in order to provide competent pro bono representation.

Finally, Council members expressed the view that many lawyers are not informed of pro bono opportunities. While a number of large law firms hire pro bono coordinators who present pro bono opportunities to the partners and associates of the firm, most mid-size and small firms do not have such a resource. Lawyers who do not know where

to go or whom to contact in order to do pro bono work are not likely to seek out such opportunities.

After discussing the many challenges to pro bono service, the Council members suggested a number of possible solutions to these obstacles. The results of the Council’s discussions as to how to resolve these challenges will be reported in the next Chair’s column, so stay tuned! ■

Deane B. Brown, Partner, Hughes Socol Piers Resnick Dym, Ltd.

A commitment to truth

BY HON. MIKE HYMAN, JUDGE, ILLINOIS APPELLATE COURT, IMMEDIATE PAST CHAIR BENCH AND BAR SECTION

We keep hearing about fake news and fake history and fake facts. About alternative truth and post-truth. That truth is in the eye of the beholder, a subjective impression of reality, an illusion of the mind. A few months ago, *Time* magazine’s cover posed the question, “Is Truth Dead?”

I suggest that this assault on the very concept of truth is also an assault on our legal system which, by design, aims at revealing truth.

Trials involve a rational pursuit of truth, which resides in the facts. We follow rules of evidence, rules of procedure, and rules of professional conduct and swear witnesses to tell nothing but the truth, all for the singular purpose of ascertaining the true facts of what happened. As a federal appellate panel has noted, “Our adversary system depends on a most jealous safeguarding of truth and candor.” Now take a step back and ask yourself whether trials are fundamentally about determining truth.

Many judges and lawyers might argue that a trial is not an exercise in recovering truth. That’s because for as long as there have been lawyers, they have been massaging and filtering truth so as to substantiate their client’s case and undermine their opponent’s. In the process, truth, through the medium of

language, gets spun, twisted, bent, bruised, condensed, ignored, skewed, exaggerated, and shaped, reshaped, and misshaped.

Commentators have said as much. Federal Judge Marvin Frankel observed that “Partisan lawyers do not try to uncover the truth. On the contrary, lawyers trained and commissioned to seek justice, are engaged very often in helping to obstruct and divert the search for truth.” In a similar vein, legendary Judge Henry Friendly wrote, “Under our adversary system the role of counsel is not to make sure the truth is ascertained but to advance [the] client’s cause by any ethical means.” There are also constitutional and legal constraints on truth seeking— for example, the Fifth Amendment protection against self-incrimination, the Fourth Amendment prohibition on unreasonable search and seizure, and testimonial privileges such as doctor-patient, attorney-client, and spousal.

Consider, too, the admonition of Dean Monroe Freedman that attorneys have an obligation to dispute, if they can, “the reliability or credibility of an opposing witness whom he [or she] knows to be truthful.” Professor Stephen Gillers identified “courtroom truth,” which he described as “a unique species of the genus truth, and it is not necessarily congruent with objective or absolute truth, whatever

that may be.” And Publilius Syrus might have been thinking about trials when, over 2,000 years ago, he wrote, “In quarreling the truth is always lost.”

That said, still, getting at truth must be at the root of a trial. Lawyers should avoid trivializing, minimizing, or, in any other manner, defusing the power of truth. Rather, they should embrace their role as pursuers of truth and strive mightily to cultivate a culture that values truth. To be sure, once a society loses its ability to discern fact from fiction it risks the legitimacy of its core institutions, including its legal system.

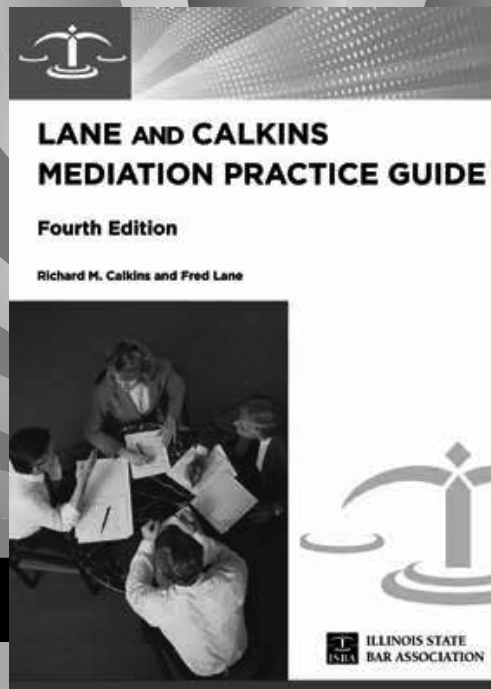
Without a commitment to truth, trust and respect for the courts fades. Without a commitment to truth, everything that the judiciary says or does is potentially suspect. Without a commitment to truth, fairness and justice, both of which depend on truth, degenerate into meaningless platitudes.

Do we need any more reason to keep truth from becoming a victim of rhetoric?

Rehearing: “Lawyers occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing had happened.” – *Winston Churchill* ■

This article, which appeared in the July/August issue of the *CBA Record*, is reprinted with the permission of the Chicago Bar Association.

Bundled with a complimentary Fastbook PDF download!



LANE AND CALKINS MEDIATION PRACTICE GUIDE, 4th Edition

Whether you're considering starting a new mediation practice or just looking to brush up on your skills, *Lane and Calkins Mediation Practice Guide* is a must-have book. Now in its Fourth Edition and published for the first time by the ISBA, this time-tested guide has long been the go-to book for mediators. The guide is written by respected experts Fred Lane and Richard M. Calkins who use it as the materials for their popular *40 Hour Mediation/Arbitration Training* course.

The book covers everything from a basic overview of alternative dispute resolution to a detailed discussion of the psychology of mediation. You'll learn the mediation process, the roles of all parties involved, closing techniques, and creative approaches to settlement. Throughout the book, real-life case studies are provided to highlight and exemplify the ideas discussed. In the Appendices you'll find an overview of how to develop a mediation practice, a discussion of collaborative divorce, and excerpts from relevant statutes, standards, and rules. Order your copy today and pay a fraction of the price previously charged by for-profit publishers!

Order at
<http://www.isba.org/store/books/mediation>
or by calling Janet at 800-252-8908
or by emailing Janet at Jlyman@isba.org

LANE AND CALKINS MEDIATION PRACTICE GUIDE, 4th Ed.

\$65 Member/\$100 Non-Member



Illinois has a history of
some pretty good lawyers.
We're out to keep it that way.

Michael Tardy retires as Director of the Administrative Office of the Illinois Courts

BY HON. ALFRED M. SWANSON, JR., (RET.)

After 41 years working for the court system, Michael Tardy is ready for a change. He retired August first as director of the Administrative Office. Tardy told me he has been blessed to work with a progressive court that is open and transparent.

Tardy began his career working for the Circuit Court of Cook County in the Department of Social Services. He was a clinical social worker – working with misdemeanor, DUI, and drug defendants. He worked with a range of people. One early experience was a client high on PCP who jumped out of a first floor window.

He did not plan to work for the Administrative Office. He was happy in his position with the Circuit Court. A friend he knew through his work as a probation officer had begun work for the AOIC and suggested Tardy apply for a position in the new probation services division. The appeal was the opportunity to supervise the office and impact policy on a statewide basis. So, he applied for the position and was hired. Gradually, he moved up the ranks, first as a regional director of probation services, later as deputy director and finally as Director of the Administrative Office. In the course his career, Tardy developed a deep respect and passion for the judicial system.

Talk with Mike Tardy, as I have on several occasions, and you talk with a person who is calm, smiling, reflective, and in control. Chief Justice Lloyd Karmeier described Tardy this way: “He was outstanding. He had patience, understanding, was organized. And, he had the foresight to know where the Administrative Office should go.”

Justice Mary Jane Theis described Tardy as passionate about access to justice. “He used creative thinking to bring in new ideas such as evidence based practices.” Chief Justice Karmeier said Tardy pushed the development of evidence based systems

to assist judges presiding in bond court with more information and tools to help them set bonds for criminal defendants. Justice Theis agreed and added that Tardy was aware of and pushed the use of risk assessment tools in the bond-setting process before it became a topic of conversation and emphasis for the Supreme Court.

Justice Theis said Tardy “used his probation experience to approach issues like a system of community correction in the juvenile justice issues.” And, he used his background to find ways to try to change behavior to try to reduce recidivism.

Tardy told me he relied upon his training as a social worker in working with contemporaries and in finding ways to improve access to the justice system. On his watch, there were programs to develop forms to assist *pro se* litigants negotiate the judicial process, and specialized courts to provide alternatives to incarceration, and programs to help senior citizens and veterans through the system.

Tardy views as among his accomplishments as director using the AOIC to have a presence and profile with all the courts, to improve competency at all levels, including education programs for judges, and through instilling a management process for court administration. Another big accomplishment is the growing use of technology, e-filing at the appellate and Supreme Court and soon at all of the trial courts across the State. Tardy’s disappointment is that it has taken longer to achieve an e-filing system than he had hoped. But, he is confident that when practitioners, judges, and court clerks realize the advantages technology can provide the system will be much better off.

Chief Justice Karmeier added that Tardy “has introduced new measures to improve

pretrial release practices and helped place Illinois at the forefront of initiatives to improve access to justice.”

Tardy told me he will miss most “the extraordinary gift of working with a court staff and the dialogue with the staff” in working to move the Court forward. He is pleased that the Supreme Court has chosen his deputy, Marcia Meis, to be the next Director of the Administrative Office.

Tardy plans to spend more time with his family and grandson and travel. In addition, he hopes to continue working on some projects for the court system. ■



ILLINOIS STATE
BAR ASSOCIATION

Now Every Article Is the Start of a Discussion

If you’re an ISBA section member, you can comment on articles in the online version of this newsletter

Visit
WWW.ISBA.ORG
to access the archives.

***People v. Way*: A defendant charged with aggravated DUI may raise the affirmative defense of sole proximate cause**

BY HON. BRAD L. BADGLEY

In *People v. Way*, 2017 IL 120023, the Illinois Supreme Court addressed the admissibility of certain evidence relating to the charge of aggravated driving under the influence (DUI). On January 28, 2012, Defendant Ida Way was driving under the influence when she collided with another vehicle, causing serious physical injury to two people. *Id.* at ¶ 3. Defendant consented to a urine test, which indicated the use of cannabis. *Id.* She was charged with three counts of aggravated DUI (625 ILCS 5/11-501(a)(6), (d)(1)(C)). *Id.* at ¶ 4. Following a bench trial, Defendant was convicted in the Circuit Court of St. Clair County of aggravated DUI. *Id.* at ¶ 11. Finding that the Vehicle Code indicated a legislative intent to require strict liability as to the accident, the Court refused to allow Defendant to present evidence that a medical condition (low blood pressure), rather than drug impairment, caused Defendant to lose consciousness and collide with another vehicle. *Id.* at ¶ 10.

Defendant appealed and the Appellate Court reversed and remanded, finding that Defendant should have been allowed to present such evidence at trial, and it was for the trier of fact to determine whether a medical condition was the sole and proximate cause of the collision. *Id.* at ¶ 15. The State was granted leave to appeal to the Illinois Supreme Court, who reversed the judgment of the Appellate Court. *Id.* at ¶ 38. Specifically, the Illinois Supreme Court found that, although Defendant should have been allowed to present evidence that an unforeseen medical condition rather than drug impairment was the sole cause of the collision, Defendant failed to make an adequate offer of proof to support this affirmative defense because Defendant

was unable to establish that her sudden low blood pressure was the sole proximate cause of the collision. *Id.* Specifically, Defendant explained that she would have attempted to call her physician, Dr. Helen McDermott, who would have testified that “it was possible” that Defendant’s loss of consciousness was caused by her low blood pressure, not that the low blood pressure was the cause of her loss of consciousness. *Id.* at ¶ 35. The Illinois Supreme Court found that this was insufficient to show sole proximate cause. *Id.* at ¶ 36.

Notably, and as the Illinois Supreme Court emphasized, an aggravated DUI, based on a violation of Section 11-501(a)(6), requires only a causal link between the physical act of driving and another person’s death, serious bodily injury, permanent disability or disfigurement. The State is not required to prove that the defendant was impaired, that the illegal substance in his or her system affected the ability to drive, or that the illegal substance was a proximate cause of the victim’s injury or death. Nonetheless, the Illinois Supreme Court concluded that nothing in the statutory framework precludes a defendant charged with an aggravated DUI, predicated on Section 11-501(a)(6), to present an affirmative defense that a collision resulting in serious bodily injury or death was caused solely by a sudden unforeseeable medical condition.

In a special concurrence written by Justice Garman, and joined by Chief Justice Karmeier, Justice Garman indicated that she would hold, however, that “a defendant charged with aggravated DUI predicated on section 11-501(a)(6) is barred from presenting an affirmative defense that a collision resulting in a

serious bodily injury or death was caused solely by a sudden unforeseeable medical condition that rendered the defendant driver incapable of controlling the vehicle.” *Id.* at ¶ 49. She reasoned that *People v. Martin*, 2011 IL 109102 held that the State is not required to prove impairment in aggravated DUI cases predicated on *per se* misdemeanor violations, and the legislature intended a violation of 11-501(a)(6) to be a strict liability offense. *Id.* at ¶ 45. Thus, allowing a defendant to show that a medical condition was the sole cause of her loss of consciousness (rather than the presence of drugs in her system) would implicitly put impairment at issue. *Id.* at ¶ 47. Because impairment must be strictly presumed once prohibited drugs are found in a defendant’s system, a defendant charged with aggravated DUI predicated on section 11-501(a)(6) should be barred from presenting such an affirmative defense. *Id.* at ¶ 48-49.

The legislature intended for impairment to be strictly presumed once prohibited drugs are found in a defendant’s system. As Justice Garman aptly noted, allowing a defendant to raise a sole proximate cause affirmative defense is a roundabout way of putting impairment at issue. Thus, the net effect of the Illinois Supreme Court’s ruling appears to be inconsistent with the purpose of the statute. Yet, instead of addressing this greater issue, the Illinois Supreme Court focused on a deficient offer of proof. Additionally, a question must be asked as to whether holding a defendant strictly liable is consistent with modern science regarding the manner in which cannabis is metabolized, as well as the reality that cannabis consumption moves toward legalization. ■

Summer externs = HUGE Help

BY JUDGE DEBRA B. WALKER

Another summer has rolled around, and I have again received enormous help from my externs from the University of Illinois College of Law, my alma mater. I often allow law students to shadow me in the winter, and from this exposure, I select one or more to serve as externs for me the following summer. I also often invite my colleagues to host summer externs. Sometimes, my colleagues ask me questions about the utility of hosting law students in chambers for a summer.

Here is a sampling of reasons to employ volunteer summer externs: It is wonderful to be surrounded by those with a youthful outlook on life. My externs always provide me with information about what is

happening today in law schools. I have found this to be a great way to maintain contact with my alma mater. Although my technological skills are improving, I learn so much more about technology every summer from my tech-savvy summer externs. Some externs bring a specialized skill set. This summer, I hosted a brilliant student who had recently passed the CPA exam. She was incredibly helpful to me on a divorce case that involved a lot of number-crunching. Every summer, I have an extern perform a multi-level internet search on me to determine if I need to make any judicial privacy requests. We should all be concerned about private information like our address, telephone number, children's

names and school being accessible in the public domain. I save up non-urgent legal research projects throughout the year and provide them to the externs to work on when they are not observing court proceedings. Externs can even help with writing submissions for Section Council newsletters (see below)!

I would urge all of my judicial colleagues to host summer externs. They receive our wisdom and mentoring which will improve their skills when they begin practicing before us. We receive the myriad methods of assistance outlined above. It is a true WIN-WIN scenario. ■

ISBA LAW ED
CLE FOR ILLINOIS LAWYERS

SAVE THE DATE

First Annual: Abraham Lincoln's Legacy - Lessons for Today's Lawyer

September 8, 2017 • 9 a.m. - 4:30 p.m. Central

Live program • Lincoln, IL

CLE Credit: 4.0 MCLE

FREE ONLINE CLE:

All eligible ISBA members can earn up to 15 MCLE credit hours, including 6 PMCLE credit hours, per bar year.

For more information:

www.isba.org/cle/upcoming

Abraham Lincoln overcame poverty, lack of formal education, chronic depression, and other obstacles to become one of the leading lawyers in Illinois. Lessons from Lincoln's life and law practice continue to inspire, influence, and impact generations of lawyers who strive to be leaders in the legal profession. Don't miss this full-day seminar that examines Lincoln's legal career, the character traits that helped him achieve success in law and politics, how he dealt with his personal and professional issues, and how he networked with clients and lawyers around the state to build a successful practice.

LINCOLN
Lincoln College
Johnson Hall - Auditorium
1115 Nicholson Road

Member Price: \$110.00

Looking ahead: A reflection on the emerging diversity in the law profession

BY MORGAN HESS

As Judge Debra B. Walker's summer extern, I had the opportunity to attend the "The Future Is Now: Legal Services 2.017" conference, hosted by the Illinois Supreme Court Commission on Professionalism, on Thursday, May 18th. After, I came away with a better understanding of the legal profession and the challenges it currently faces.

Dennis Garcia's presentation, entitled "Diversity is the Future of the Legal Workplace", brought to light that the future of the legal profession not only involves progression in terms of how the law is practiced, through technological advances and steps to increase efficiency throughout the legal process; but the legal profession is also experiencing progression in the makeup of the profession, in terms of who is practicing law. Anyone who has been involved in the legal profession can tell you that change certainly occurs slowly. Similarly, it is often the case, not just within the legal world, that individuals are reluctant to change in general. We all become set in our ways and accustomed to our own routine that develops through habit and what feels most comfortable to us, as do professionals. However, without change, there can be no progression. Inevitably, although success may have occurred, it will halt. A lawyer or law firm will reach a point of success maximization if they remain stagnant in their method or practice, as the competition will undoubtedly outperform and surpass those unwilling to embrace change.

One of the most notable points from Garcia's presentation was when he discussed the need for diversity in the makeup of attorneys practicing law, as different life experiences are paramount to confronting the various client needs and challenges faced while practicing law. In addition, Garcia highlighted that there

needs to be a change in the mentality of the legal profession from a "know it all" attitude, to a "learn it all" mentality. Since their law school enrollment, lawyers have been bred to accept the competitive "know it all" culture of the legal world. This is an overused and failing approach, it is now time for a "learn it all" mentality that fosters progression and comports with the emerging diversity within the law profession. Without change, individuals will be less likely to admit their own biases, to move past them, and to welcome perspectives and ideas different from their own.

You might be asking yourself, "what do I know, as a law student? How could my opinion be relevant, since I haven't stepped foot into the actual practice of law?" That is correct, I haven't had a chance to flap my wings and soar out on my own into the law profession just yet, but I have dipped my toes into this unique, time-capsuled world. Ultimately, my individual experience in the legal profession bears no disaccreditation on my ability to study the law, observe actual practice, and report my findings. The truth of the matter is that the benefits of diversity are realized whenever one individual must work in coordination with another, no matter what the profession or underlying activity may be. Take sports for example: A soccer team would not be successful if every player had the skill set of a goalie, it would be much more difficult for the ball to reach the back of the opponent's net. A basketball team full of Shaquille O'Neals might seem like a great idea, as Shaq was a successful player recognized for his on-court accomplishments, but the opposing team would simply push the fast break and outrun the big-bodied O'Neals for the entire night. It is diversity that allows a team to succeed by bringing various sets of skills, perspectives from

different life-experiences, and alternate approaches to problem solving.

In a world that is constantly looking for the "next-best thing," it is the innovators that experience success. We must push past our comfort zone towards change, incorporating differences as various tools needed to achieve progression. Without change we are ultimately left at a standstill, watching those capable of incorporating diversity and accepting the challenge to reach beyond what is comfortable pass us by. The same is true for the legal profession. ■

Did you know?

**Every article
published by the ISBA in
the last 15 years is available
on the ISBA's Web site!**

**Want to order a copy
of any article?* Just call or e-mail
Jean Fenski at 217-525-1760
or jfenski@isba.org**

*Sorry, if you're a licensed Illinois lawyer you must be an ISBA member to order.

Busted: The myth of the digital native

BY SAMANTHA SWARTZ, UNIVERSITY OF ILLINOIS COLLEGE OF LAW CLASS OF 2019

The Illinois Supreme Court Commission on Professionalism held The Future Is Now 2.017 conference on Thursday, May 18, at the Art Institute in Chicago. The conference was dedicated to understanding the changes the law professional will have to make to thrive in the coming years. The speakers discussed several topics throughout the course of the day in both presentation and town hall formats. As a current law student, it was a fascinating opportunity to listen to the problems facing the legal market and innovative approaches to solving them.

A topic that was repeated throughout the day was how the legal market will have to adapt to handle millennials entering both as new attorneys and as clients. Being a millennial, it was interesting to hear about the challenges my generation poses to the existing legal market structure. While millennials were discussed throughout the conference, the presentation given by Darth Vaughn titled 'The Myth of The Digital Native: Establishing Competence and Eliminating Tech Bias in The Modern Law Firm' resonated with me. His presentation focused on the need for attorneys to acquire and maintain proficiency in programs like Microsoft Word and Excel.

This did not surprise me. However, he went on to explain that firms are dealing with this information gap by hiring millennials and assuming they have advanced skills on these programs. According to Mr. Vaughn, that is the myth of the "digital native."

The idea that millennials are naturally gifted when it comes to technology has been a regular occurrence in my life. While interning at various businesses, I was the person turned to for computer advice, despite being the youngest and least experienced person in the room. I was also told by a supervisor only a few years my senior that advanced Excel skills and knowledge about shortcuts was something I was expected to know because of the presumption that I came in knowing how to do these things. In my experience, technical skills are not areas millennials are asked about in interviews – they are areas millennials are presumed to know just because of their age. While I can confidently say that I am proficient in most day-to-day tasks in Word and Excel, there were some items on Mr. Vaughn's list of necessary skills that I, and that most millennials, could not do. These tasks were not taught at school, but the majority of millennials would be able to

figure out the answer in a self-sufficient manner. Millennials are not new to these programs and have used them throughout their lives, but those experiences do not necessarily include the advanced functions law firms are expecting them to know. This mismatch of presumed knowledge and actual skills is the truth behind the myth.

Millennials are not "digital natives." We are "fast adaptors." We grew up alongside technology. We learned how to type on a flip-phone using T9 texting. Then we typed on tiny sliding keyboards. Now we can type without looking on our touchscreens. No one taught us how to do this. We figured it out because we wanted to know. This set of skills is resoundingly similar. We want to meet the expectations of our future employers, so we will learn how to adapt to the requirements of a professional environment. Mr. Vaughn is correct in his belief that millennials are not digital natives and currently there is a mismatch between presumed and actual abilities, but like most myths, this one is based on a sliver of truth. Millennials might not currently have those skills, but they are ready to adapt to build the required professional skill set necessary to succeed in their careers. ■

Recent appointments and retirements

1. Pursuant to its Constitutional authority, the Supreme Court has appointed the following to be Circuit Judge:
 - Marian E. Perkins, Cook County Circuit, 5th Subcircuit, July 13, 2017
 - Hon. Samuel J. Betar, III, Cook County Circuit, 13th Subcircuit, July 28, 2017
 2. The Circuit Judges have appointed the following to be Associate Judge:
 - Adam M. Dill, 6th Circuit, July 7, 2017
 - Rodney S. Forbes, 6th Circuit, July 14, 2017
 3. The following judges have retired:
 - Hon. Rickey Jones, Cook County Circuit, 5th Subcircuit, July 3, 2017
 - Hon. Ann O'Donnell, Cook County Circuit, 13th Subcircuit, July 3, 2017
 - Hon. Nancy J. Katz, Associate Judge, Cook County Circuit, July 5, 2017
 - Hon. Holly F. Clemons, Associate Judge, 6th Circuit, July 7, 2017
 - Hon. Bruce R. Kelsey, Associate Judge, 8th Circuit, July 10, 2017
- Hon. Edward Washington II, Cook County Circuit, 5th Subcircuit, July 16, 2017
 - Hon. William J. Becker, Associate Judge, 4th Circuit, July 31, 2017
 - Hon. Evelyn B. Clay, Cook County Circuit, July 31, 2017
 - Hon. Fe Fernandez, Associate Judge, Cook County Circuit, July 31, 2017
 - Hon. M. Carol Pope, Appellate Court, 4th District, July 31, 2017 ■

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

September

Thursday, 09-07-17 - Webinar—

Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday and Friday 09-7 & 8, 2017

– **Chicago, ISBA Regional Office—** Guardian Ad Litem, Child Representative, and Attorney for Minor Child Training – 2017. Presented by Family Law.

Friday, 09-08-17 – Lincoln Heritage

Museum, Lincoln, IL—First Annual: Abraham Lincoln's Legacy - Lessons for Today's Lawyer. 9 a.m.-4:30 p.m.

Tuesday, 09-12-17 – Webinar—Using Mac in a Window's World. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 09-13-17 – LIVE Webcast—Title VII Now Covers Sexual Orientation – The Law That Made History. Presented by Labor and Employment. 12-2 pm.

Thursday, 09-14-17 – LIVE Webcast—Environmental Due Diligence in the Era of President Trump. Presented by Real Estate. 12-1 p.m.

Thursday, 09-14-17 - Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 09-15-17 – Fairview Heights, Four Points by Sheraton—Solo and Small Firm Practice Institute. All Day.

Wednesday, 09-20-17 – LIVE Webcast—Construction Escrow, Lien Waivers and Sworn Statements: Best Practices. Presented by Construction Law.

12-1 p.m.

Thursday, 09-21-17 - Webinar—Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm

Tuesday, 09-26-17 – Webinar—End of Year Preparations – Best Practices for Your Law Firm. Practice Toolbox Series. 12:00 -1:00 p.m.

Tuesday, 09-26-17 – Oak Brook—Executive Power Hour: Managing Company Relations in a Union Environment. Joint ISBA/MCA Seminar Lunch. 11:30 Lunch; 12:00 – 1:30 p.m. program.

Wednesday, 09-27-17 – LIVE Webcast Webinar—HIPAA For Employer-Sponsored Health Plans. Presented by Employee Benefits. 12-1 p.m.

Thursday, 09-28-17 – LIVE Webcast—How Secure Are you? Cyber for the Illinois Practitioner. Presented by Insurance Law. 12-2:15 p.m.

October

Wednesday, 10-04-17 LIVE Webcast—Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

Thursday, 10-05-17 - Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 10-05-17 – Chicago, ISBA Regional Office—The New Bankruptcy Rules and Advanced Topics in Consumer Bankruptcy. Presented by Commercial Banking, Collections & Bankruptcy. 9am

– 4pm.

Thursday, 10-05-17 – LIVE Webcast—The New Bankruptcy Rules and Advanced Topics in Consumer Bankruptcy. Presented by Commercial Banking, Collections & Bankruptcy. 9am – 4pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Beginner DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—Fall 2017 Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

Friday, 10-06-17 – Chicago, ISBA Regional Office—Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

Monday, 10-09-17 – Chicago, ISBA Regional Office—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Monday, 10-09-17 –Fairview Heights—Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

Tuesday, 10-10-17 – Webinar—Outlook for Mac. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 10-11-17 – LIVE Webcast—Enforcing Illinois' Eviction Laws: A Basic Guide to Landlord Remedies and Tenant Rights. Presented by Real Estate Law. 12-1 pm.

Wednesday, 10-11-17 – LIVE Webcast—Working Effectively with Interpreters. Presented by Delivery of Legal Services. 2-3:30 pm.

Thursday, 10-12-17 - Webinar—
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training Master Series. Master Series

Thursday, 10-19-17 - Webinar—
Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Thursday, 10-19-17 – Bloomington—
Real Estate Law Update – Fall 2017. Presented by Real Estate.

Tuesday, 10-24-17 – Webinar—Law Firm Accounting 101. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 10-25-17 – Webinar—
Working with Low Income Clients. Presented by Delivery of Legal Services. 12-1:30 pm.

Friday, 10-27-17 – Chicago, ISBA Regional Office—Solo and Small Firm Practice Institute. All Day.

Friday, 10-27-17 – LIVE Webcast—
Solo and Small Firm Practice Institute. All Day.

November

Wednesday, 11-01-17 – ISBA Chicago Regional Office—Anatomy of a Medical Negligence Trial. Presented by Tort Law. All Day.

Thursday, 11-02-17 - Webinar—
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-03-17 – NIU Naperville—
Real Estate Law Update – Fall 2017.

Presented by Real Estate.

Thursday, 11-09-17 - Webinar—
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-10-17 – Chicago, ISBA Regional Office—Profession Under Pressure; Stress in the Legal Profession and Ways to Cope. Presented by Civil Practice and Procedure. 8:15 am-4:45 pm.

Tuesday, 11-14-17 – Webinar—Speech Recognition. Practice Toolbox Series. 12:00 -1:00 pm.

Wednesday, 11-15-17 – Chicago, ISBA Regional Office—Microsoft Word in the Law Office: ISBA's Tech Competency Series. Master Series with Barron Henley. All Day.

Thursday, 11-16, 2017 – Chicago, ISBA Regional Office—Microsoft Excel In the

Law Office: ISBA's Technology Competency Series. Master Series with Barron Henley. Half Day.

Thursday, 11-16, 2017 – Chicago, ISBA Regional Office—Adobe Acrobat and PDF Files in the Law Office: ISBA's Technology Competency Series. Master Series with Barron Henley. Half Day.

Thursday, 11-16-17 - Webinar—
Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 11-17-17 – Webcast—Obtaining and Using Social Media Evidence at Trial. Presented by Young Lawyers Division. 12:00-1:30 pm.

Tuesday, 11-28-17 - Webcast—Ethics Questions: Multi-Party Representation – Conflicts of Interest, Joint Representation and Privilege. Presented by Labor and Employment. 2:00-4:00 pm. ■



ILLINOIS BAR FOUNDATION

At the heart of the ISBA

SUPPORT THE ILLINOIS BAR FOUNDATION

Contributions from ISBA members are vital to the success of the IBF's programs.

Access to Justice Grants

Warren Lupel Lawyers Care Fund

Post- Graduate Fellowship Program

More than \$400,000 has been given to support these important programs, this year. Every dollar you contribute makes an impact in the lives of those in need.

Please consider making a donation to the IBF to improve statewide access to justice.

BENCH & BAR

ILLINOIS BAR CENTER
SPRINGFIELD, ILLINOIS 62701-1779

AUGUST 2017

VOL. 48 NO. 2

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820



ISBA LAW ED

CLE FOR ILLINOIS LAWYERS

SAVE THE DATE

Title VII Now Covers Sexual Orientation - The Law That Made History

September 13, 2017 • 12 p.m. Central

Live webcast

CLE Credit: 2.0 MCLE

Presented by Labor & Employment

FREE ONLINE CLE:

All eligible ISBA members can earn up to 15 MCLE credit hours, including 6 PMCLE credit hours, per bar year.

For more information:

www.isba.org/cle/upcoming

Learn about the groundbreaking case that has changed the labor and employment landscape and what it means for your clients!

In an en banc opinion, the 7th Circuit has now added Sexual Orientation as a Protected Classification under Title VII, making this a first in the country ruling that may or may not create a sea of change in anti-discrimination laws and the law, in general, as it relates to sexual orientation.

Member Price: \$60.00